

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 92-10

August 25, 1992

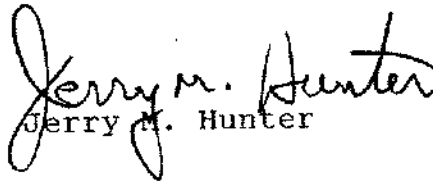
TO: All Employees, Office of the General Counsel

FROM: Jerry M. Hunter, General Counsel

SUBJECT: Summary of Operations (Fiscal Year 1991)

Attached is a copy of the Summary of Operations for Fiscal Year 1991. As reflected in the summary, the fine record of performance which has been established over the years by the staffs of Headquarters and Regional Offices has continued.

I wish to express to you my deep appreciation for this outstanding achievement which was accomplished despite continued staffing and budgetary constraints. Congratulations for another year of extraordinary accomplishment and contribution to the Agency's mission.


Jerry M. Hunter

Attachment

cc: NLRBU

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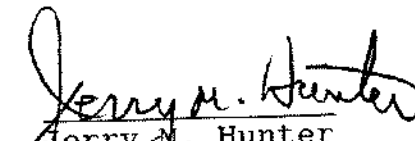
SUMMARY OF OPERATIONS
FISCAL YEAR 1991

INTRODUCTION

This summary is a continuation of the General Counsel's practice of providing an annual overview of the operations of the Office of the General Counsel.

As the summary reflects, the record of performance achieved by the staffs of the Headquarters and Regional Offices of the General Counsel in Fiscal Year 1991 continued to be outstanding. This sterling record is truly extraordinary because it was accomplished in the face of continued budgetary restraints upon our staff and resources.

I wish to extend my sincere appreciation to all staff members for their continued hard work and dedication to public service and to the mission of this Agency. I would also like to thank those who practice before us for the cooperation and assistance that they have extended to us in our efforts to effectively and efficiently administer the Act.


Jerry M. Hunter
General Counsel

ORGANIZATION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel is composed of five major components. These components are responsible for the various casehandling, administrative and personnel functions of the Office. They are: The Division of Operations-Management and Regional Offices, the Division of Advice, the Division of Enforcement Litigation, the Division of Administration, and the Office of Equal Employment Opportunity.

The Division of Operations-Management includes Headquarters and Regional Office staffs. The Headquarters staff has responsibility on behalf of the General Counsel for the operations of the Regional, Subregional and Resident Offices, and the coordination of casehandling in those offices with the Washington divisions of the Office of the General Counsel and the Board.

There are 33 Regional Offices, 2 Subregional Offices and 17 Resident Offices. Each Regional Office is headed by a Regional Director who is responsible for the management of the office and any attached Subregional or Resident Offices and for the investigation and initial determination of the merits of unfair labor practice cases and representation cases. The Regional Director is also responsible for processing requests for information under the Freedom of Information Act.

The Division of Advice is responsible for rendering substantive legal advice to the General Counsel and to Regional Offices in cases which involve novel or complex issues, cases of national interest or cases which involve developing and changing areas of the law. The Division also processes requests for injunctive relief under Section 10(j) of the Act, litigates injunction cases in Federal appellate courts under Sections 10(l) and 10(j), and indexes and classifies Board and court decisions under the Act.

The Division of Enforcement Litigation is responsible for the Agency's litigation in the United States Courts of Appeals, the Supreme Court of the United States, and for contempt and miscellaneous litigation in Federal and State courts to protect the Agency's processes and functions. The Office of Appeals is a major component of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaint in unfair labor practice cases and recommends action to be taken thereon by the General Counsel. It also processes appeals from the Regional Directors' denials of FOIA requests.

The Division of Administration is under the general supervision of the General Counsel and has been delegated responsibility for the development, direction and coordination of administrative staff support functions for both the Board and the General Counsel.

The Office of Equal Employment Opportunity is under the direction of the Board and the General Counsel and is responsible for the development, monitoring and evaluation of the Agency's affirmative action program and the processing of internal complaints of discrimination.

General Information

The information set forth below reflects the work of the various Divisions during this past fiscal year (FY 91). These statistics are preliminary and based on actions taken during the year.

Regional Offices

As a result of a labor dispute between Greyhound Lines, Inc. (Greyhound) and the Amalgamated Council of Greyhound Local Unions (Union), the Union commenced a strike in March 1990. Since the commencement of the strike, in excess of 150 unfair labor practice charges involving 30 of the Agency's 33 Regional Offices have been filed against both Greyhound and the Union. With respect to the unfair labor practice charges filed against Greyhound, a consolidated complaint issued on November 6, 1990, alleging that the Employer has engaged in numerous acts of unlawful conduct by, among other things, implementing certain bargaining proposals prior to the impasse; by interfering with the rights of strikers to engage in lawful picket line activities, and by terminating employees because of their union activities. The Agency investigated additional charges alleging, among other things, that Greyhound has unlawfully discharged over 200 employees because of their union related activities. A second consolidated complaint issued on January 10, 1991, amending the complaint which had issued on November 6, 1990. The January 10, 1991 amended complaint includes allegations that Greyhound Lines, Inc., insisted to the point of impasse on unlawful bargaining proposals as well as additional allegations of unlawful interference with employees' rights to engage in union activities, including the discharge of over 200 strikers nationwide. The unfair labor practice hearing on these matters opened in the Milwaukee, Wisconsin, Regional Office on January 15, before an administrative law judge. Because of the voluminous amount of subpoenaed documents which had to be reviewed and collated, the hearing was adjourned until April 8, 1991. The hearing continued until November 1991, when the ALJ adjourned it in order to consider Greyhound's request that the "national issues" be severed from "local issues." On December 30, 1991, the ALJ issued his Order

holding in part that the "national issues" should be severed from "local issues." The Board affirmed the Order on March 12, 1992. On March 18, the trial on the "national issues" reopened and on July 14, 1992 the hearing was closed. A briefing schedule that concludes in November 1992 was established. The litigation of the numerous issues involved in this case will necessitate a continuation of the tremendous commitment of monetary and staffing resources. By all estimates, the litigation of Greyhound could require the testimony of in excess of 1,000 witnesses. Because many of the violations alleged in the complaint occurred throughout the continental United States, the parties foresee the trial moving to multiple unknown locations. The Agency is also appealing the bankruptcy judge's adverse rulings involving Greyhound and is engaged in a massive nationwide effort to locate approximately 9,300 potential discriminatees. This herculean effort has required the mailing of 12,600 questionnaires in order to ascertain who the discriminatees are, as well as their interim earnings.

CWA v. Beck Cases. The Office of the General Counsel has made determinations in over 330 charges which were filed in 23 Regions arising from the Supreme Court's 1988 decision in CWA v. Beck. In Beck the Court held that the National Labor Relations Act does not permit labor organizations to expend dues money, over the objections of dues paying nonmembers (i.e., employees who are paying dues as a result of contractual union security requirements but are not members of the union), for expenses unrelated to collective bargaining, contract administration or grievance adjustment. As a result of that decision, charges have been filed against many different labor organizations with respect to the myriad of issues resulting from Beck, including what kinds of union expenditures are representational and the propriety of union procedures for implementing this decision. A great many staff hours in Washington and in the field have been and will continue to be expended in order to assure proper handling of these cases, especially since these charges present issues of first impression.

Case Intake

The NLRB has no authority to initiate proceedings on its own. Its processes can be invoked only by the filing of a charge or a representation petition by a member of the public. Total case

intake during FY 91 was 37,008 compared to 41,507 cases in the previous year, representing a 10.8 percent decrease in intake. Unfair labor practice case intake at 30,851 decreased by 8.8 percent while representation case intake at 5,766 decreased by 19.6 percent. In other types of cases filed (UD, AC and UC), there was a decrease from the previous year's intake with the filing of 391 such cases compared to 501 cases.

Regional Professional Staff and Productivity

The average professional staff to handle the workload in the Regional Offices during FY 91 was 956 compared to 973 in FY 90. In the area of productivity [the measure of average monthly output per regional professional during the year], FY 91 output per field professional per month increased to 136.3 units as compared to 135.3 units for FY 90. The productivity figure is affected by a number of factors including case intake, average professional staff, attrition and the settlement rate.

Information Officer Inquiries

The General Counsel's Public Information Program continued to successfully prevent a large number of nonmeritorious cases from being filed with the Agency and continued to provide assistance to members of the public by referring them to the appropriate agencies or organizations or by assisting them in filing charges with the NLRB, where appropriate. In FY 91, the total number of inquiries received through the Public Information Program was 219,821, an increase of 0.4 percent over the 218,873 inquiries received during FY 90. The rate of charge acceptance (percent of instances in which the contact results in a charge being filed) was 5.1 percent, as compared to 5.2 percent in FY 90. Since the inception of this program several years ago, the Agency has reduced its charge acceptance rate by 4 percent from 9.2 percent in 1980 to the current 5.1 percent rate. In terms of cases, this program in this year alone saved the Agency the cost and time of investigating approximately 9,000 no-merit cases.

Unfair Labor Practice Cases

Settlements

The Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to effect a voluntary

resolution of meritorious unfair labor practice cases. Over the years, the Agency has had an excellent record in achieving this end. In FY 91, 9,733 settlements of unfair labor practice cases were obtained representing a rate of 93.2 percent as compared to 9,430 settlements in FY 90 and a rate of 91.5 percent.

Complaints

In FY 91, 3,208 complaints issued as compared to 3,241 in FY 90. The median time to issue complaints was 46 days, as compared to the median time of 45 days achieved in FY 90.

Merit Factor

The percentage of unfair labor practice cases in which a Regional Director determines that formal proceedings are warranted is called the merit factor. In FY 91 that factor was 36.1 percent -- approximately the same as last year's merit factor of 35.4 percent. In general, over the years, the merit factor has fluctuated between 31 percent and 36 percent.

Litigation Results

The General Counsel won 84.8 percent of Board and Administrative Law Judge decisions in whole or in part in FY 91, a slight increase in the litigation success rate of 83.4 percent attained in FY 90. The litigation success rate is a factor which permits an assessment of the quality of Regional investigations and litigation.

Remedies

In FY 91, \$70,331,453 was distributed to employees as backpay, representing a 2.4 percent increase over FY 90 in which \$68,694,080 was distributed. The amount paid out to employees in FY 91 as reimbursement of fees, dues, and fines was \$1,096,479 and represents a significant percentage increase when compared to the \$453,397 disbursed in FY 90. In addition, in FY 91, 3,954 employees were offered reinstatement, as compared to 3,649 in FY 90 which represents an 8.4 percent increase.

Representation Cases

Elections

The Regions conducted 3,741 initial elections in FY 91 of which 86.1 percent were held pursuant to agreement of the parties, compared to 4,210 initial elections and an 85 percent election agreement rate for FY 90. The median time to proceed to an election from the filing of a petition was 48.5 days, a slight decrease from the 48.7 day median in FY 90.

Regional Director Decisions

In FY 91, Regional Directors issued 680 decisions in contested representation cases after hearing in a median of 44 days, bettering the goal of 45 days. This compares with FY 90, when 833 decisions were issued in the same median time.

Representation and Union Deauthorization Hearings

In this category, 917 initial hearings were held in FY 91 as compared to 1,040 in FY 90. The number of hearings held each year has declined over the last several years since they have been directly affected by case intake and the increase in election agreements.

Division of Enforcement Litigation

Appellate Court Activity

Intake and Productivity In FY 91, the Appellate Court Branch was responsible for handling 323 cases, 182 of which were referred by the Regions for court enforcement and 141 cases in which petitions for review were filed by other parties. By filing briefs in 141 cases and securing compliance in another 123 cases, dispositions were made in 264 cases. In FY 90, total intake was 249 cases and dispositions totaled 327 cases. Oral arguments were presented in 164 cases in FY 91 compared with 145 cases in FY 90. The median time for filing applications for enforcement was 29 days in FY 91 compared with 94 days in FY 90. The median time for both enforcement and review cases, from the receipt of cases to the filing of briefs, was 139 days in FY 91 compared with 184 days for FY 90.

Litigation Results

In FY 91, 178 cases were decided by United States Courts of Appeals compared with 161 cases in FY 90. Of these cases, 86.5 percent were won in whole or in part in FY 91 compared with an 88.8 percent success rate in FY 90. In FY 91, 5.6 percent were remanded entirely compared with 3.7 percent in FY 90. Also in FY 91, 7.9 percent were total losses, up from the 7.5 percent in FY 90.

Special Litigation Activity In FY 91, the Special Litigation Branch had an intake of 80 cases and closed 74 cases. This compares with an intake of 79 cases and the closing of 90 cases in FY 90. Additionally, in FY 91, the Branch filed 82 briefs: 24 appellate court briefs, 29 district court briefs and 29 bankruptcy court briefs. This compares to FY 90 when the Branch filed 82 briefs, 25 to the appellate courts, 43 to the district courts and 15 to the bankruptcy courts. In FY 91, the Branch also participated in 40 oral arguments and received 35 decisions as follows: 7 bankruptcy decisions, winning 4 and losing 3, 14 district court decisions, winning all, 13 appellate court decisions, winning 12, losing 1, and 1 state court win.

Supreme Court Activity In FY 91, the Supreme Court decided two Board cases, which the Board won. The Board also participated as amicus in one case. In FY 90, the Supreme Court decided one Board case. In FY 91, the Court denied 23 private petitions for certiorari and granted four; one Board petition was filed and granted. In FY 90, the Court denied 26 private party petitions for certiorari and granted none; no Board petitions were filed.

Contempt Activity In FY 91, 77 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 137 cases in FY 90. Voluntary compliance was achieved in 14 cases during the fiscal year, without the necessity of filing a contempt petition, while in 32 others, it was determined that contempt was not warranted. During the same period, 17 civil contempt proceedings were instituted as compared to 29 civil proceedings in FY 90. These included five motions for the assessment of fines and writ of body attachment. In addition, two criminal contempt proceedings were initiated during the year.

Twenty civil contempt or equivalent adjudications were awarded in favor of the Board, including four where the court ordered civil arrest and assessment of fines. During the fiscal year, the Contempt Litigation Branch collected \$89,844 in fines and \$644,644 in backpay, while recouping \$95,965 in court costs and attorneys' fees incurred in contempt litigation.

Appeals Activity In FY 91, the Office of Appeals received 3,574 appeals from Regional Directors' refusals to issue complaints, an increase of 49 from the 3,525 appeals received in FY 90. In FY 91, the office disposed of 3,648 appeals, an increase of 173 from the 3,475 decided in FY 90. The percentage of reversals of Regional Directors' dismissals was 3.5 percent, an increase from the 2 percent reversed in FY 90. Median time to process appeals in FY 91 was 10 days, a reduction of 2 days from the 12-day median attained in FY 90.

The Division of Advice

During FY 91, the Advice Branch continued to timely process its cases. Thus, the median time for processing cases continued to be 24 days. Also, during the year, the Branch received 792 cases and closed 964 cases, thereby eliminating the backlog. The median age of cases pending at the end of the fiscal year was 27 days as compared to a median of 25 days for the prior fiscal year.

Section 10(j) Injunction Activity

In FY 91, the Injunction Branch received 142 cases, as compared to the 157 cases received in the prior year. Section 10(j) relief was authorized in 38 cases, or 27 percent of the cases. In addition, the success rate, i.e., in these cases the Agency achieved either a satisfactory settlement or a substantial victory in litigation, for authorized 10(j) cases was 90 percent compared to 89 percent the previous fiscal year.

Section 10(1) Injunctive Activity

The Regional Offices filed 46 petitions for 10(1) injunctions with the appropriate district courts in FY 91, a 9.5 percent increase from the 42 petitions filed in FY 90.

Injunction Branch Litigation

During FY 91, the Injunction Branch handled 95 cases in addition to the requests for Section 10(j) authorization. These cases involved appeals from district court decisions in 10(j) or 10(1) cases, contempt of district court decrees, and litigation advice to Regions in their litigation of 10(j) or 10(1) cases. The Branch directly handled 10 appeals that were pending at the beginning of the fiscal year and 11 appeals that were filed during the year. The Branch also directly litigated 3 district court matters. Of these 24 cases, the Branch won 7 and satisfactorily resolved 7 others before decision. Four cases were lost and 5 were pending decision at the end of the fiscal year. In FY 91 of the 7 cases that resulted in court decisions, 5 were won and 2 were lost. The Branch also authorized the Regions to institute contempt proceedings in 12 cases during FY 91.

Date: August 1992